



STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
P.O. Box 11729  
Albany, NY 12211

## Notice of Decision

Decision Date: October 28, 2014

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000000437

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

You applied to the Small Business Marketplace so that your business could offer health insurance coverage to your employees. On February 28, 2014, you requested an appeal based on a determination that you were not eligible to offer coverage.

An impartial hearing officer has reviewed the evidence in a formal procedure called a Desk Review. The following is the decision that has been rendered on your appeal based on information that was provided in your Marketplace account.

If you have questions about your Decision, you can contact us by:

- Calling the Customer Service Center at 1-855-355-5777
- Sending Mail to:  
NY State of Health Appeals  
P.O. Box 11729  
Albany, NY 12211
- Sending a Fax to 1-855-900-5557

When contacting the NY State of Health about your appeal and/or the Decision, please refer to the Appeal Identification Number at the top of this letter.

### Legal Authority

We are sending you this notice in accordance with Federal regulation 45 CFR § 155.545(b).

If you need this information in a language other than English or you need assistance reading this notice, we can help you. Call 1-855-355-5777 (TTY - English: 1-800-662-1220) (TTY – Spanish: 1-877-662-4886).

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## Decision

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Appeal Identification Number: AP000000000437

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

## Issue

The issue presented to the Appeals Unit for the New York State of Health is:

Did the Small Business Marketplace properly determine [REDACTED] was not a "qualified employer" eligible to purchase insurance coverage through the New York State of Health as of March 1, 2014?

## Procedural History

The Small Business Marketplace received your application.

On February 28, 2014, on behalf of your business, you filed an appeal request to the Appeals Unit of the New York State of Health. Accordingly, the Appeals Unit reviewed your appeal on a desk review basis.

On March 1, 2014, the Small Business Marketplace issued an eligibility determination on your application. The notice states that your business was not eligible to offer coverage to your employees because your principal business location was outside of New York State.

On March 1, 2014, the Marketplace sent you a Notice indicating that the Appeals Unit of NY State of Health would review your business's appeal. We have considered the eligibility record and the evidence [REDACTED] submitted supporting the appeal. This decision is a result of that review.

## Findings of Fact

A review of the record supports the following findings of fact:

- 1) Your business name is [REDACTED].
- 2) The Company Information section of your application currently lists your businesses contact address as [REDACTED].
- 3) The roster for your business lists you as the only employee.
- 4) Your personal address is listed on the employee roster as [REDACTED].

Conflicting evidence, if any, was considered and found to be less credible than the evidence noted above.

## Applicable Law and Regulations

*Small employer* means, in connection with a group health plan with respect to a calendar year and a plan year, an employer who employed an average of at least 1 but not more than 100 employees on business days during the preceding calendar year and who employs at least 1 employee on the first day of the plan year (45 CFR § 155.20).

*Qualified employer* means a small employer that elects to make, at a minimum, all full-time employees of such employer eligible for one or more QHPs in the small group market offered through a SHOP (45 CFR § 155.20).

*Qualified employee* means an individual employed by a qualified employer who has been offered health insurance coverage by such qualified employer through the SHOP (45 CFR § 155.20).

The Small Business Marketplace must permit qualified employers to purchase coverage for qualified employees. An Employer is eligible to purchase coverage through the Small Business Marketplace if such employer is:

- (1) A small employer,
- (2) Elects to offer all full-time employees coverage in a Qualified Health Plan through the Small Business Marketplace, and

- (3) Has its principal business address in New York State and offers coverage to all its full-time employees OR offers coverage to each eligible employee serving that employer's primary Worksite in New York State

(45 CFR § 155.710).

## **Legal Analysis**

In order to be a qualified employer eligible to offer coverage to employees in the Small Business Marketplace an employer must be considered small, elect to offer all full-time employees coverage through the Marketplace, AND have its principal business or primary worksite address in New York State.

According to your application, your business is located in Hackensack, New Jersey. Since this is not located in the New York State, you do not meet all of the eligibility criteria discussed above. Your personal address, while located in New York State, cannot be considered your business address without evidentiary proof. At the time of this desk review, no evidence has been submitted to show that the address you listed for yourself on the employee roster should be considered your business address or primary worksite.

Furthermore, your current business roster lists you as the only employee. In order to be considered eligible to offer coverage to employees through the Small Business Marketplace an employer must employ at least one employee. You do not have any employees but yourself.

Therefore, you are not a qualified employer who is eligible to offer coverage to employees through the Small Business Marketplace.

## **Decision**

The Marketplace's March 1, 2014 eligibility determination is AFFIRMED.

**Effective Date of this Decision:** October 28, 2014

## **How this Decision Affects Your Eligibility**

The Marketplace's March 1, 2014 eligibility determination remains in effect. You are not eligible to offer coverage through the Small Business Marketplace.

If you need this information in a language other than English or you need assistance reading this notice, we can help you. Call 1-855-355-5777 (TTY - English: 1-800-662-1220) (TTY - Spanish: 1-877-662-4886).

## **If You Disagree with this Decision (Appeal Rights)**

This Decision is final unless you submit an appeal request to U.S. Department of Health and Human Services or bring a lawsuit under New York Civil Practice Law and Rules, Article 78.

If you do not agree with this Decision, you have the right to appeal outside the Marketplace and may:

- Bring a lawsuit in state court in accordance with Article 78 of the Civil Practice Law and Rules within four months after the date of the Decision Date, which appears on the first page of the Decision.

If you wish to be represented by an attorney in bringing an outside appeal and do not know how to go about getting one, you may contact legal resources available to you. You may, for example, contact the local County Bar Association, Legal Aid, or Legal Services for assistance.

## **If You Have Questions about this Decision (Customer Service Resources):**

You can contact us in any of the following ways:

- By calling the Customer Service Center at 1-855-355-5777
- By mail at:  
NY State of Health Appeals  
P.O. Box 11729  
Albany, NY 12211
- By fax: 1-855-900-5557

## **Summary**

The Marketplace's March 1, 2014 eligibility determination remains in effect. You are not eligible to offer coverage through the Small Business Marketplace.

## **Legal Authority**

We are sending you this notice in accordance with Federal regulation 45 CFR § 155.545(a).

If you need this information in a language other than English or you need assistance reading this notice, we can help you. Call 1-855-355-5777 (TTY - English: 1-800-662-1220) (TTY – Spanish: 1-877-662-4886).

**A Copy of this Decision Has Been Provided To:**

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]